

Introduced by Senator Ashburn

February 18, 2005

An act to amend Section 707 of the Welfare and Institutions Code, relating to juvenile crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 520, as introduced, Ashburn. Juvenile crime: fitness hearings.

Existing law establishes the criteria by which the juvenile court may find that specified minors, including a person who has committed one of specified violent offenses when he or she was 16 years of age or older, 2 or more felony offenses under certain circumstances, or specified violent offenses at 14 years of age or older, are unfit for treatment in juvenile court.

This bill would make technical, nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 707 of the Welfare and Institutions
2 Code is amended to read:
3 707. (a) (1) In any case in which ~~a~~*the* minor is alleged to be
4 a person described in *subdivision (a) of* Section 602~~(a)~~ by reason
5 of the violation, when he or she was 16 years of age or older, of
6 any criminal statute or ordinance except those listed in
7 subdivision (b), upon motion of the petitioner made prior to the
8 attachment of jeopardy the court shall cause the probation officer
9 to investigate and submit a report on the behavioral patterns and
10 social history of the minor being considered for a determination

1 of unfitness. Following submission and consideration of the
2 report, and of any other relevant evidence which the petitioner or
3 the minor may wish to submit, the juvenile court may find that
4 the minor is not a fit and proper subject to be dealt with under the
5 juvenile court law if it concludes that the minor would not be
6 amenable to the care, treatment, and training program available
7 through the facilities of the juvenile court, based upon an
8 evaluation of the following criteria:

9 (1) The degree of criminal sophistication exhibited by the
10 minor.

11 (2) Whether the minor can be rehabilitated prior to the
12 expiration of the juvenile court's jurisdiction.

13 (3) The minor's previous delinquent history.

14 (4) Success of previous attempts by the juvenile court to
15 rehabilitate the minor.

16 (5) The circumstances and gravity of the offense alleged in the
17 petition to have been committed by the minor.

18 A determination that the minor is not a fit and proper subject to
19 be dealt with under the juvenile court law may be based on any
20 one or a combination of the factors set forth above, which shall
21 be recited in the order of unfitness. In any case in which a
22 hearing has been noticed pursuant to this section, the court shall
23 postpone the taking of a plea to the petition until the conclusion
24 of the fitness hearing, and no plea which may already have been
25 entered shall constitute evidence at the hearing.

26 (2) This paragraph shall apply to a minor alleged to be a
27 person described in Section 602 by reason of the violation, when
28 he or she has attained the age of 16 years, of any felony offense
29 when the minor has been declared to be a ward of the court
30 pursuant to Section 602 on one or more prior occasions if both of
31 the following apply:

32 (A) The minor has previously been found to have committed
33 two or more felony offenses.

34 (B) The offenses upon which the prior petition or petitions
35 were based were committed when the minor had attained the age
36 of 14 years.

37 Upon motion of the petitioner made prior to the attachment of
38 jeopardy the court shall cause the probation officer to investigate
39 and submit a report on the behavioral patterns and social history
40 of the minor being considered for a determination of unfitness.

1 Following submission and consideration of the report, and of any
2 other relevant evidence that the petitioner or the minor may wish
3 to submit, the minor shall be presumed to be not a fit and proper
4 subject to be dealt with under the juvenile court law unless the
5 juvenile court concludes, based upon evidence, which evidence
6 may be of extenuating or mitigating circumstances that the minor
7 would be amenable to the care, treatment, and training program
8 available through the facilities of the juvenile court, based upon
9 an evaluation of the following criteria:

10 (A) The degree of criminal sophistication exhibited by the
11 minor.

12 (B) Whether the minor can be rehabilitated prior to the
13 expiration of the juvenile court's jurisdiction.

14 (C) The minor's previous delinquent history.

15 (D) Success of previous attempts by the juvenile court to
16 rehabilitate the minor.

17 (E) The circumstances and gravity of the offense alleged in the
18 petition to have been committed by the minor.

19 A determination that the minor is a fit and proper subject to be
20 dealt with under the juvenile court law shall be based on a
21 finding of amenability after consideration of the criteria set forth
22 above, and findings therefor recited in the order as to each of the
23 above criteria that the minor is fit and proper under each and
24 every one of the above criteria. In making a finding of fitness, the
25 court may consider extenuating and mitigating circumstances in
26 evaluating each of the above criteria. In any case in which the
27 hearing has been noticed pursuant to this section, the court shall
28 postpone the taking of a plea to the petition until the conclusion
29 of the fitness hearing and no plea which may already have been
30 entered shall constitute evidence at the hearing. If the minor is
31 found to be a fit and proper subject to be dealt with under the
32 juvenile court law pursuant to this subdivision, the minor shall be
33 committed to placement in a juvenile hall, ranch camp, forestry
34 camp, boot camp, or secure juvenile home pursuant to Section
35 730, or in any institution operated by the Youth Authority.

36 (3) If, pursuant to this subdivision, the minor is found to be not
37 a fit and proper subject for juvenile court treatment and is tried in
38 a court of criminal jurisdiction and found guilty by the trier of
39 fact, the judge may commit the minor to the Youth Authority in

1 lieu of sentencing the minor to the state prison, unless the
2 limitations specified in Section 1732.6 apply.

3 (b) Subdivision (c) shall be applicable in any case in which a
4 minor is alleged to be a person described in Section 602 by
5 reason of the violation, when he or she was 16 years of age or
6 older, of one of the following offenses:

7 (1) Murder.

8 (2) Arson, as provided in subdivision (a) or (b) of Section 451
9 of the Penal Code.

10 (3) Robbery.

11 (4) Rape with force or violence or threat of great bodily harm.

12 (5) Sodomy by force, violence, duress, menace, or threat of
13 great bodily harm.

14 (6) Lewd or lascivious act as provided in subdivision (b) of
15 Section 288 of the Penal Code.

16 (7) Oral copulation by force, violence, duress, menace, or
17 threat of great bodily harm.

18 (8) Any offense specified in subdivision (a) of Section 289 of
19 the Penal Code.

20 (9) Kidnapping for ransom.

21 (10) Kidnapping for purpose of robbery.

22 (11) Kidnapping with bodily harm.

23 (12) Attempted murder.

24 (13) Assault with a firearm or destructive device.

25 (14) Assault by any means of force likely to produce great
26 bodily injury.

27 (15) Discharge of a firearm into an inhabited or occupied
28 building.

29 (16) Any offense described in Section 1203.09 of the Penal
30 Code.

31 (17) Any offense described in Section 12022.5 or 12022.53 of
32 the Penal Code.

33 (18) Any felony offense in which the minor personally used a
34 weapon listed in subdivision (a) of Section 12020 of the Penal
35 Code.

36 (19) Any felony offense described in Section 136.1 or 137 of
37 the Penal Code.

38 (20) Manufacturing, compounding, or selling one-half ounce
39 or more of any salt or solution of a controlled substance specified

1 in subdivision (e) of Section 11055 of the Health and Safety
2 Code.

3 (21) Any violent felony, as defined in subdivision (c) of
4 Section 667.5 of the Penal Code, which would also constitute a
5 felony violation of subdivision (b) of Section 186.22 of the Penal
6 Code.

7 (22) Escape, by the use of force or violence, from any county
8 juvenile hall, home, ranch, camp, or forestry camp in violation of
9 subdivision (b) of Section 871 where great bodily injury is
10 intentionally inflicted upon an employee of the juvenile facility
11 during the commission of the escape.

12 (23) Torture as described in Sections 206 and 206.1 of the
13 Penal Code.

14 (24) Aggravated mayhem, as described in Section 205 of the
15 Penal Code.

16 (25) Carjacking, as described in Section 215 of the Penal
17 Code, while armed with a dangerous or deadly weapon.

18 (26) Kidnapping, as punishable in subdivision (d) of Section
19 208 of the Penal Code.

20 (27) Kidnapping, as punishable in Section 209.5 of the Penal
21 Code.

22 (28) The offense described in subdivision (c) of Section 12034
23 of the Penal Code.

24 (29) The offense described in Section 12308 of the Penal
25 Code.

26 (30) Voluntary manslaughter, as described in subdivision (a)
27 of Section 192 of the Penal Code.

28 (c) With regard to a minor alleged to be a person described in
29 Section 602 by reason of the violation, when he or she was 14
30 years of age or older, of any of the offenses listed in subdivision
31 (b), upon motion of the petitioner made prior to the attachment of
32 jeopardy the court shall cause the probation officer to investigate
33 and submit a report on the behavioral patterns and social history
34 of the minor being considered for a determination of unfitness.
35 Following submission and consideration of the report, and of any
36 other relevant evidence which the petitioner or the minor may
37 wish to submit the minor shall be presumed to be not a fit and
38 proper subject to be dealt with under the juvenile court law
39 unless the juvenile court concludes, based upon evidence, which
40 evidence may be of extenuating or mitigating circumstances, that

1 the minor would be amenable to the care, treatment, and training
2 program available through the facilities of the juvenile court
3 based upon an evaluation of each of the following criteria:

4 (1) The degree of criminal sophistication exhibited by the
5 minor.

6 (2) Whether the minor can be rehabilitated prior to the
7 expiration of the juvenile court's jurisdiction.

8 (3) The minor's previous delinquent history.

9 (4) Success of previous attempts by the juvenile court to
10 rehabilitate the minor.

11 (5) The circumstances and gravity of the offenses alleged in
12 the petition to have been committed by the minor.

13 A determination that the minor is a fit and proper subject to be
14 dealt with under the juvenile court law shall be based on a
15 finding of amenability after consideration of the criteria set forth
16 above, and findings therefor recited in the order as to each of the
17 above criteria that the minor is fit and proper under each and
18 every one of the above criteria. In making a finding of fitness, the
19 court may consider extenuating or mitigating circumstances in
20 evaluating each of the above criteria. In any case in which a
21 hearing has been noticed pursuant to this section, the court shall
22 postpone the taking of a plea to the petition until the conclusion
23 of the fitness hearing and no plea which may already have been
24 entered shall constitute evidence at the hearing. If, pursuant to
25 this subdivision, the minor is found to be not a fit and proper
26 subject for juvenile court treatment and is tried in a court of
27 criminal jurisdiction and found guilty by the trier of fact, the
28 judge may commit the minor to the Youth Authority in lieu of
29 sentencing the minor to the state prison, unless the limitations
30 specified in Section 1732.6 apply.

31 (d) (1) Except as provided in subdivision (b) of Section 602,
32 the district attorney or other appropriate prosecuting officer may
33 file an accusatory pleading in a court of criminal jurisdiction
34 against any minor 16 years of age or older who is accused of
35 committing an offense enumerated in subdivision (b).

36 (2) Except as provided in subdivision (b) of Section 602, the
37 district attorney or other appropriate prosecuting officer may file
38 an accusatory pleading against a minor 14 years of age or older
39 in a court of criminal jurisdiction in any case in which any one or
40 more of the following circumstances apply:

1 (A) The minor is alleged to have committed an offense which
2 if committed by an adult would be punishable by death or
3 imprisonment in the state prison for life.

4 (B) The minor is alleged to have personally used a firearm
5 during the commission or attempted commission of a felony, as
6 described in Section 12022.5 of the Penal Code.

7 (C) The minor is alleged to have committed an offense listed
8 in subdivision (b) in which any one or more of the following
9 circumstances apply:

10 (i) The minor has previously been found to be a person
11 described in Section 602 by reason of the commission of an
12 offense listed in subdivision (b).

13 (ii) The offense was committed for the benefit of, at the
14 direction of, or in association with any criminal street gang, as
15 defined in subdivision (f) of Section 186.22 of the Penal Code,
16 with the specific intent to promote, further, or assist in any
17 criminal conduct by gang members.

18 (iii) The offense was committed for the purpose of
19 intimidating or interfering with any other person's free exercise
20 or enjoyment of any right secured to him or her by the
21 Constitution or laws of this state or by the Constitution or laws of
22 the United States and because of the other person's race, color,
23 religion, ancestry, national origin, disability, gender, or sexual
24 orientation, or because the minor perceives that the other person
25 has one or more of those characteristics, as described in Title
26 11.6 (commencing with Section 422.6) of Part 1 of the Penal
27 Code.

28 (iv) The victim of the offense was 65 years of age or older, or
29 blind, deaf, quadriplegic, paraplegic, developmentally disabled,
30 or confined to a wheelchair, and that disability was known or
31 reasonably should have been known to the minor at the time of
32 the commission of the offense.

33 (3) Except as provided in subdivision (b) of Section 602, the
34 district attorney or other appropriate prosecuting officer may file
35 an accusatory pleading in a court of criminal jurisdiction against
36 any minor 16 years of age or older who is accused of committing
37 one of the following offenses, if the minor has previously been
38 found to be a person described in Section 602 by reason of the
39 violation of any felony offense, when he or she was 14 years of
40 age or older:

1 (A) Any felony offense in which it is alleged that the victim of
2 the offense was 65 years of age or older, or blind, deaf,
3 quadriplegic, paraplegic, developmentally disabled, or confined
4 to a wheelchair, and that disability was known or reasonably
5 should have been known to the minor at the time of the
6 commission of the offense;

7 (B) Any felony offense committed for the purposes of
8 intimidating or interfering with any other person's free exercise
9 or enjoyment of any right secured to him or her by the
10 Constitution or laws of this state or by the Constitution or laws of
11 the United States and because of the other person's race, color,
12 religion, ancestry, national origin, disability, gender, or sexual
13 orientation, or because the minor perceived that the other person
14 had one or more of those characteristics, as described in Title
15 11.6 (commencing with Section 422.6) of Part 1 of the Penal
16 Code; or

17 (C) The offense was committed for the benefit of, at the
18 direction of, or in association with any criminal street gang as
19 prohibited by Section 186.22 of the Penal Code.

20 (4) In any case in which the district attorney or other
21 appropriate prosecuting officer has filed an accusatory pleading
22 against a minor in a court of criminal jurisdiction pursuant to the
23 provisions of this subdivision, the case shall then proceed
24 according to the laws applicable to a criminal case. In
25 conjunction with the preliminary hearing as provided for in
26 Section 738 of the Penal Code, the magistrate shall make a
27 finding that reasonable cause exists to believe that the minor
28 comes within the provisions of this subdivision. If reasonable
29 cause is not established, the criminal court shall transfer the case
30 to the juvenile court having jurisdiction over the matter.

31 (5) For any offense for which the prosecutor may file the
32 accusatory pleading in a court of criminal jurisdiction pursuant to
33 this subdivision, but elects instead to file a petition in the juvenile
34 court, if the minor is subsequently found to be a person described
35 in subdivision (a) of Section 602, the minor shall be committed
36 to placement in a juvenile hall, ranch camp, forestry camp, boot
37 camp, or secure juvenile home pursuant to Section 730, or in any
38 institution operated by the Youth Authority.

39 (6) If, pursuant to this subdivision, the minor is found to be not
40 a fit and proper subject for juvenile court treatment and is tried in

1 a court of criminal jurisdiction and found guilty by the trier of
2 fact, the judge may commit the minor to the Youth Authority in
3 lieu of sentencing the minor to the state prison, unless the
4 limitations specified in Section 1732.6 apply.

5 (e) Any report submitted by a probation officer pursuant to
6 this section regarding the behavioral patterns and social history
7 of the minor being considered for a determination of unfitness
8 shall include any written or oral statement offered by the victim,
9 the victim's parent or guardian if the victim is a minor, or if the
10 victim has died, the victim's next of kin, as authorized by
11 subdivision (b) of Section 656.2. Victims' statements shall be
12 considered by the court to the extent they are relevant to the
13 court's determination of unfitness.